

2003 DRAFTING REQUEST**Assembly Substitute Amendment (ASA-AB774)**Received: **02/12/2004**Received By: **jkreye**Wanted: **Soon**

Identical to LRB:

For: **Scott Jensen (608) 264-6970**By/Representing: **brett**This file may be shown to any legislator: **NO**Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax - utilities
Shared Revenue
Tax - sales**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Jensen@legis.state.wi.us**Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Public utility aid payments

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 02/13/2004	kgilfoy 02/13/2004					
/1			chaugen 02/13/2004		mbarman 02/13/2004	mbarman 02/13/2004	

FE Sent For:

<END>

02/12/2004 01:42:25 PM

Page 1

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/?	jkreye	1-2/13 Kmg	Ch 2-13	Ch 2-13 pt			

FE Sent For:

<END>

Kreye, Joseph

From: Healy, Brett
 Sent: Wednesday, February 11, 2004 10:16 AM
 To: Kreye, Joseph
 Subject: AB 774 existing plants suggested
 Importance: High

AB 774 (LRB 3944) EXISTING PLANTS POTENTIAL AMENDMENTS

Updated: Wednesday, February 11, 2004

- if subject to property tax
then credit would make sense.*
- put it under s. 70.995 — covered by the fee assessed against municipality*
- page being for which the muni wants a credit for payment in lieu of taxes?*
- muni owned subject to been of tax payment (in muni)*
- 1) S. 70.995 – amend bill so that Dept. of Revenue, not the local assessors, does the assessment (Rick Olin/WI Utilities Assoc & others). **PLEASE CHANGE.**
 - 2) Clarify that municipally owned electric utilities are not subject to a “double tax” under the bill (MEUW/Customers First/). “except that this subdivision subject to a payment of a local tax equivalent under s. 66.0811(2) or Wis. Adm. Code Ch. PSC 109”. **PLEASE CHANGE.** The utility would receive a dollar for dollar credit for their pilots. This would not be refundable. The payment would be capped at the utility’s actual property tax liability.
 - 3) New Provision – PARACHUTE PLAN. Municipalities and Counties that would receive a lower payment under the capacity based payment structure (\$2,000 per megawatt) would continue under the current net book value payment system. Once depreciation takes a muni or county’s net book value payment below the capacity based payment, they would switch over to the capacity based system. A muni or county would never go back to the net book value system.
 - 4) There is concern that the Fiscal Bureau and the DOR have underestimated the cost of the bill because of “the difficulty in placing a value on facilities such as substations” (WI Utilities Assoc). This would “make the credit a tempting target in future, difficult budgets”. **NO CHANGE NEEDED.**
 - 5) Hold harmless so no county or municipality will receive less than it did under the existing formula (WI Co. Utility Tax Assoc). Cost? PARACHUTE PLAN (PP) WILL ADDRESS CONCERN.
 - 6) Hold harmless - freeze depreciation on existing plants (Dairyland Power/WI Utilities Assoc.). PP WILL ADDRESS CONCERN.
 - 7) Lift the per capita caps on aid payments to communities (Dairyland Power). PP WILL ADDRESS CONCERN.
 - 8) Transmission company substations appear to have been removed from existing formula payment calculations (WI Co. Utility Tax Assoc). **NO CHANGE NEEDED.**
 - 9) Delete the sections that put the general structures and substations back on the local property tax (Dairyland Power/Customers First/). There are concerns that low-density rural areas would pay more on a per customer basis, the administrative costs associated with paying property taxes in multiple jurisdictions for rural coops would have to be pass along to members, assessment uniformity would be difficult and Wisconsin would be at a disadvantage compared to neighboring states with no property tax. **NO CHANGE NEEDED.**
 - 10) Section 3, Pg. 3, line 17 – insert “owned or leased” to ensure all general structures are covered (WI Utilities Assoc.). **PLEASE CHANGE.**
 - 11) Pg. 3, line 22 – change “transmission company” to “property” to recognize transmission assets not owned by a transmission company (WI Utilities Assoc.). **PLEASE CHANGE.**
 - 12) Pg. 3, line 24 to pg. 4, line 7 and pg. 4, line 23 to pg. 5, line 4 – the bill does not address the potential situation where the credit exceeds the license fee (John Stolzenberg/DOR/). **NEED TO ADD A STANDARD CARRY FORWARD PROVISION WHERE THE COMPANY KEEP UNUSED CREDITS FOR 10 YEARS.**
 - 13) Pg. 3, section 3 – several companies sell electricity at the wholesale level only and their gross license fee is calculated under s. 76.29. Is a cross reference needed to make sure these

02/11/2004

restriction where property tax liability exceeds license fee liability

companies are covered under the bill (DOR)? PLEASE CHANGE.

14) Pg. 4, section 5 – the repeal of 76.28(9) appears to be too broad (Stolzenberg/Kreye). PLEASE CHANGE.

15) Pg. 4, line 2 – Gross revenues tax will be paid under 76.29 for the next several years, not 76.28 (2) as in the current bill (Calpine). Cross reference needed. PLEASE CHANGE.

16) Section 19, Pg. 10, lines 21 to 23 – The bill appears to exclude any new hydro plant or wind farm from the capacity-based incentive payment for a new power plant fueled by an alternative energy resources under 79.04(7)(c)1 (Stolzenberg/Customers First). PLEASE CHANGE.

17) Section 18, pg. 10, line 17 – ash disposal facility incentive is repealed (Dairyland Power). That was not the intent. PLEASE CHANGE.

18) Pg. 12, lines 1 to 8 – delete the study on returning distribution assets back to the local property tax roll (WI Utilities Assoc). NO CHANGE NEEDED.

Kreye, Joseph

From: Olin, Rick
Sent: Thursday, February 12, 2004 4:55 PM
To: Kreye, Joseph
Subject: RE: How about this for AB 774

Joe:

I will think about this some more tomorrow, but I think you have to distinguish that it pertains only to part of the payment that is for the value of the production plant.

DOR will have a hell of time administering it because of factors such as the per capita limit, the \$125 million value limit, and the 1991 value limit. You probably should ignore those factors until DOR raises them. Otherwise your draft will get really gnarly.

-----Original Message-----

From: Kreye, Joseph
Sent: Thursday, February 12, 2004 4:50 PM
To: Olin, Rick
Subject: How about this for AB 774

Rick,

Do you think this language works for getting existing plants over to capacity factor [I would put "except as provided.." phrases in 79.04 (1), (2), and (6)]?

79.04 (4m) Beginning with distributions in 2005, for production plants described under subs. (1) and (2), if in any year the payment to the municipality or county in which the production plant is located would be greater under subs. (6) and (7) than under subs. (1) or (2), the municipality or county shall receive payments under subs. (6) and (7) beginning with that year and in each year thereafter.

Joe

Joseph T. Kreye
Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

*rather than under
subs. (1) or (2),*

*see the change I
made with draft*

Kreye, Joseph

From: Olin, Rick
Sent: Wednesday, February 11, 2004 4:15 PM
To: Kreye, Joseph
Cc: Healy, Brett
Subject: AB 774

Joe:

I just talked to Brett. These points may expand some of his notes.

1. Use 15 years on the credit carry-forward as we discussed (not 10).
2. Municipally owned l,h&p cos. do not get a Ch 76 credit for payments in lieu of taxes that are made under PSC Rule 109.

They would be eligible for the credit if they own gen structures or substations outside the boudaries of the owning municipality because gen structures and substations outside the host municipality's boundaries would be subject to property taxes under the bill.

3. Hydo and wind production plants would be subject to capacity aid, contrary to my November memo to Rep Jensen. They would also be subject to the hold harmless aid provisions that I described over the phone.

4. Re Point #8, property of coops would not be subject to the property tax. However, the coops would be able to claim a ch 76 tax credit, like the lh&p cos, but the basis for the credit would be payments in lieu of taxes, rather than actual property tax payments.

Because I went through Brett's notes with Rep Jensen, I may be able to clarify issues that may arise as you begin your revision. Feel free to call.

Rick
6-9916

	<u>05-06</u>	<u>06-07</u>	<u>07-08</u>	<u>08-09</u>
Capacity Based System	-6.3	-6.3	-6.3	-6.3
General Structures	-	-4.0	-4.0	-4.0
Substations	-		-9.2	-9.2
Other Distributions	-			
Increased Revs	+7.0	14.0	21.0	28.0
	<u>.7</u>	<u>+3.7</u>	<u>+2.5</u>	<u>7</u>

123 W

- 1) Munder — PILOT } outside of municipality
Coop — PILOT } credit up to 100% of the PTE

not changing what Munder can and cannot do — huge
variance in what munder pay themselves.

- 2) continue existing law for hydro & wind
— set formula
— some mechanism for existing plants
— not let down to get capacity used

- 3) new wind farms
— treated like other wind farms — regular maintenance
+ renewal.

- 4) not wanting to include transmission company substitution.
— transmission substitution property —
— not on the property tax rolls.

- 5) add analysis to the substitute
— ask Brett & Rick regarding questions.

Kreye, Joseph

From: Stolzenberg, John
Sent: Wednesday, January 21, 2004 10:57 AM
To: Healy, Brett
Cc: Stuart, Todd; Olin, Rick; Kreye, Joseph; Lovell, David
Subject: Comments on LRB-3944/1, Incentives for Existing Plants draft

Brett,

Here are the comments I have on LRB-3944/1:

1. *Page 3, line 24 to page 4, line 7; and page 4, line 23 to page 5, line 4 (SECs 4 and 7):* These SECTIONS establish a credit against license fees for the amount of property taxes paid on general structures and substations. The SECTIONS do not specify a policy when the amount of the credit exceeds the license fee. I do not know how likely this situation is. If the decision is made to address this issue in the bill, three alternatives are:
 - a. Allow the portion of the credit that exceeds the fee to be carried forward for a specified number of years. For example, many income tax credits have, I am told, a 15 year carry forward.
 - b. Provide a refund of the portion of the credit that exceeds the fee in the year the credit is claimed.
 - c. Cap the credit at the amount of the fee.
2. *Page 4, line 7; and page 5, line 4:* These lines specify that the credit is computed based upon license fee payments due on or before May 10. License fees are collected semi-annually with installments due on or before May 10 and November 10. See ss. 76.28 (3) (c) and 76.48 (3a). In addition, I understand that there are estimated and true-up payments of these fees. I don't have the expertise in tax and license fee administration to evaluate whether the single credit computation each year on May 10, as set forth in the bill, works. I also don't know the fiscal implications of having the entire year's credit attributed to the May 10 payment.
3. *Page 4, line 8 (SEC 5):* This SECTION repeals s. 76.28 (9), which not only addresses the prorating of the tax treatment of general structures but also includes other provisions, such as that the property used and useful in the operation of light, heat and power companies is subject to special assessments for local improvements. The repeal of sub. (9) appears to be too broad. Joe Kreye concurred, when I raised this repeal with him, based upon his initial review during our conversation.
4. *Page 7, lines 6 to 13; page 8, lines 1 to 11; and page 10., lines 10 to 16 (SECs 12, 14, and 17):* These SECTIONS all amend current utility shared revenue law to limit the applicability of the provision to hydroelectric production plants and wind farms. Under current law (and not changed by the bill), all three deal with production facilities that have a nominal rated capacity of 200 megawatts or more. The largest hydro plant or wind farm that I saw listed in Attachment 1 to Rick Olin's November 25, 2003 memo is the 50 MW Jim Falls hydro plant. If you agree that it is highly unlikely that a hydro plant or wind farm larger than 200 megawatts will be built in Wisconsin in the foreseeable future, an alternative to the bill's treatment of these provisions would be to clean up the statutes a little by repealing the current law provisions that apply to production plants with a capacity of 200 megawatts or more. Another alternative would be to lower the 200 megawatts threshold.
5. *Page 10, lines 21 to 23:* This treatment of the applicability of the capacity-based base payment for power plants excludes hydro plants and wind farms. This treatment has the effect of excluding any new hydro

plant or wind farm from the capacity-based incentive payment for a new power plant fueled by an alternative energy resource under s. 79.04 (7) (c) 1. If this is not your intent, the bill should be modified to reflect your intent.

Let me know if you have any questions on any of these comments.

John



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBs03493

JK:

King

RM not R

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2003 ASSEMBLY BILL 774

Today please
by 4pm

Please note that
the line #5 are
not right beginning on
page 8

Gen. Cat.

- 1 AN ACT *Gen. Cat.*; relating to: public utility aid payments, imposing local general
2 property taxes on production plant general structures and substations, and
3 creating a credit against license fees imposed on light, heat, and power
4 companies and electric cooperatives.

Analysis by the Legislative Reference Bureau

Under current law, beginning in 2005, each county and municipality in which a power production plant is located receives a state aid payment based on the net book value of the production plant, for production plants that, generally, began operation before January 1, 2004, or based on the production plant's megawatt capacity, for production plants that began operation after December 31, 2003. Under this substitute amendment, beginning in 2005, if in any year the payments to the municipality and county in which a production plant is located would be greater based on the production plant's name-plate capacity than on the depreciated net book value of the production plant, the municipality and county will receive payments based on the production plant's name-plate capacity beginning in that year and in each year thereafter.

Under current law, generally, the property of a light, heat, and power company, including general structures and substations, is exempt from the imposition of local general property taxes, if the company is subject to license fees. Under the substitute amendment, beginning with the property tax assessments as of January 1, 2005, a

general structure that is owned or leased by a light, heat, and power company is subject to local general property taxes. In addition, beginning with the property tax assessments as of January 1, 2006, a substation of a light, heat, and power company, not including transmission substation property, is subject to local general property taxes. However, the property of a light, heat, and power company that is located within the municipality that operates the company is not subject to property taxes.

In addition, beginning with license fees that are due in ~~XXXX~~ 2006, a light, heat, and power company may claim as a credit against its license fee liability an amount equal to the amount of the property taxes that the company paid in the calendar year on general structures and substations. An electric cooperative may also claim a credit against its license fee liability in an amount equal to the amount of any payments in lieu of property taxes that the cooperative paid in the calendar year, not to exceed the amount of property taxes ~~the cooperative would have paid had it's~~ ^{that} property been subject to property taxes. If the credit claimed by a light, heat, and power company or an electric cooperative exceeds the license fee liability of the company or cooperative, the state will not issue a refund check, but the company or cooperative may carry forward any remaining credit to the 15 following years.

This substitute amendment, in contrast to the bill, retains the provision under current law that allows state aid payments, based on a production plant's net book value, that are paid to a municipality and county in which an ash disposal facility is located to include an amount that is equal to twice the net book value of the ash disposal facility.

Under current law, a person who is issued a certificate of public convenience and necessity for a high-voltage transmission line must pay the Department of Administration an annual impact fee equal to 0.3 percent of the cost of the high-voltage transmission line. Under the substitute amendment, the annual impact fee is equal to 0.3 percent of the net book value of the high-voltage transmission line.

Finally, the substitute amendment requires the Department of Revenue to submit a proposal to the legislature, no later than December 31, 2004, regarding imposing local general property taxes on all property of electric cooperatives and light, heat, and power companies beginning with the property tax assessments as of January 1, 2007.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 70.995 (2) (zm) of the statutes is created to read:

2 70.995 (2) (zm) Property described under s. 70.112 (4) (am). ✓

3 SECTION 2. 70.112 (4) (am) of the statutes is created to read:

INSERT
2-2 ✓

1 70.112 (4) (am) 1. Except as provided in subd. 3., beginning with the property
2 tax assessments as of January 1, 2005, a general structure owned or leased by a light,
3 heat, and power company taxed under s. 76.28 or 76.29 is subject to general property
4 taxes and, beginning with distributions in 2005, shall not be included in the
5 calculation of payments under s. 79.04 (1) and (2).

6 2. Except as provided in subd. 3., beginning with the property tax assessments
7 as of January 1, 2006, a substation of a light, heat, and power company taxed under
8 s. 76.28 or 76.29 is subject to general property taxes and, beginning with
9 distributions in 2006, shall not be included in the calculation of payments under s.
10 79.04 (1) and (2), except that this subdivision does not apply to transmission
11 substation property.

12 3. This paragraph does not apply to ^{the} property of a light, heat, and power
13 company that is located within the boundaries of the municipality that operates the
14 company and for which payments are made under s. 66.0811 (2).

15 4. Property subject to taxation under this paragraph shall be assessed by the
16 department of revenue, as provided under s. 70.995.

17 **SECTION 3.** 76.28 (3) (e) of the statutes is created to read:

18 76.28 (3) (e) Beginning with ^{the fees due in} calendar year 2006, a light, heat, and power
19 company may claim as a credit against the fees imposed under sub. (2) and s. 76.29
20 (2) an amount equal to the amount of property taxes imposed under ch. 70 on general
21 structures and substations that the light, heat, and power company paid in the
22 ^{then current} calendar year. If a credit computed under this paragraph is not entirely offset
23 against the license fees otherwise due for the then current calendar year, the unused
24 balance may be carried forward and credited against license fees otherwise due for
25 the following 15 calendar years to the extent not offset by the license fees otherwise

1 due in all intervening years between the year in which the property taxes were paid
2 and the year in which the carry-forward credit is claimed.

3 **SECTION 4.** 76.28 (9) of the statutes is amended to read:

4 76.28 (9) PROPERTY SUBJECT TO LOCAL TAX. ~~The~~ Except as provided in s. 70.112
5 (4) (am) the license fees imposed by this section upon the gross revenues of light, heat
6 and power companies as defined in sub. (1) (e) shall be in lieu of all other taxes on
7 all property used and useful in the operation of the business of such companies in this
8 state, except that the same shall be subject to special assessments for local
9 improvements. If a general structure is used and useful in part in the operation of
10 the business of those companies in this state and in part for nonoperating purposes,
11 the license fees imposed by this section are in place of the percentage of all other taxes
12 on the property that fairly measures and represents the extent of the use and
13 usefulness in the operation of the business of those companies in this state, and the
14 balance is subject to local assessment and taxation, except that the entire general
15 structure is subject to special assessments for local improvements. Property under
16 s. 76.025 (2) shall not be taxed under this section, but shall be subject to local
17 assessment and taxation.

18 History: 1983 a. 27, 405; 1985 a. 29, 120; 1987 a. 27; 1993 a. 205; 1995 a. 27, 351; 1997 a. 35; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 107; 2003 a. 33.

18 **SECTION 5.** 76.29 (2) of the statutes is amended to read:

19 76.29 (2) IMPOSITION. ~~There~~ Subject to the credits under ss. 76.28 (3) (e) and
20 76.48 (3d), there is imposed on every light, heat, and power company and electric
21 cooperative that owns an electric utility plant, an annual license fee to be assessed
22 by the department on or before May 1, 2005, and every May 1 thereafter, ending with
23 the assessment on May 1, 2010, measured by the gross revenues of the preceding tax
24 period in an amount equal to the apportionment factor multiplied by gross revenues

multiplied by 1.59%. The fee shall become delinquent if not paid when due and when delinquent shall be subject to interest at the rate of 1.5% per month until paid. Gross revenues earned by a light, heat, and power company after December 31, 2009, are subject to the license fee imposed under s. 76.28 (2). Gross revenues earned by an electric cooperative after December 31, 2009, are subject to the license fee imposed under s. 76.48 (1r).

History: 2001 a. 16.

SECTION 6. 76.48 (3d) of the statutes is created to read:

the fee due is

76.48 (3d) Beginning with calendar year 2006, an electric cooperative may claim as a credit against the fees imposed under sub. (1r) and s. 76.29 (2) an amount equal to the amount of any payments in lieu of property taxes that the electric cooperative paid in the ^{then current} calendar year, not to exceed the amount of property taxes that the cooperative would have paid in that year had the cooperative's property been subject to taxation under ch. 70. If a credit computed under this paragraph is not entirely offset against the license fees otherwise due for the then current calendar year, the unused balance may be carried forward and credited against license fees otherwise due for the following 15 calendar years to the extent not offset by the license fees otherwise due in all intervening years between the year in which the payments were paid and the year in which the carry-forward credit is claimed.

SECTION 7. 79.04 (1) (intro.) of the statutes, as affected by 2003 Wisconsin Act 31, is amended to read:

79.04 (1) (intro.) Annually, except for production plants that begin operation after December 31, 2003, or begin operation as a repowered production plant after December 31, 2003, and except as provided in sub. (4m) and under s. 70.112 (4) (am), the department of administration, upon certification by the department of revenue,

1 shall distribute to a municipality having within its boundaries a production plant,
2 general structure, or substation, used by a light, heat, or power company assessed
3 under s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless the
4 production plant or substation is owned or operated by a local governmental unit
5 located outside of the municipality, or by an electric cooperative assessed under ss.
6 76.07 and 76.48, respectively, or by a municipal electric company under s. 66.0825
7 the amount determined as follows:

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108; 2003 a. 31, 33, 89; s. 13.93 (2) (c).

8 **SECTION 8.** 79.04 (1) (b) 1. of the statutes is amended to read:

9 79.04 (1) (b) 1. Beginning with the distribution under this subsection in 1991,
10 and ending with the distribution under this subsection in 2004, the amount
11 determined under par. (a) to value property used by a light, heat or power company
12 in a municipality may not be less than the amount determined to value the property
13 for the distribution to the municipality under this subsection in 1990, subject to
14 subds. 2., 3. and 4.

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108; 2003 a. 31, 33, 89; s. 13.93 (2) (c).

15 **SECTION 9.** 79.04 (2) (a) of the statutes, as affected by 2003 Wisconsin Act 31, *and*

16 is amended to read:

17 79.04 (2) (a) Annually, except for production plants that begin operation after
18 December 31, 2003, or begin operation as a repowered production plant after
19 December 31, 2003, and except as provided in sub. (4m) and under s. 70.112 (4) (am),
20 the department of administration, upon certification by the department of revenue,
21 shall distribute from the shared revenue account or, for the distribution in 2003, from
22 the appropriation under s. 20.835 (1) (t) to any county having within its boundaries
23 a production plant, general structure, or substation, used by a light, heat or power

1 company assessed under s. 76.28 (2) or 76.29 (2), except property described in s.
2 66.0813 unless the production plant or substation is owned or operated by a local
3 governmental unit that is located outside of the municipality in which the production
4 plant or substation is located, or by an electric cooperative assessed under ss. 76.07
5 and 76.48, respectively, or by a municipal electric company under s. 66.0825 an
6 amount determined by multiplying by 6 mills in the case of property in a town and
7 by 3 mills in the case of property in a city or village the first \$125,000,000 of the
8 amount shown in the account, plus leased property, of each public utility except
9 qualified wholesale electric companies, as defined in s. 76.28 (1) (gm), on December
10 31 of the preceding year for "production plant, exclusive of land," "general
11 structures," and "substations," in the case of light, heat and power companies,
12 electric cooperatives or municipal electric companies, for all property within the
13 municipality in accordance with the system of accounts established by the public
14 service commission or rural electrification administration, less depreciation thereon
15 as determined by the department of revenue and less the value of treatment plant
16 and pollution abatement equipment, as defined under s. 70.11 (21) (a), as determined
17 by the department of revenue plus an amount from the shared revenue account or,
18 for the distribution in 2003, from the appropriation under s. 20.835 (1) (t) determined
19 by multiplying by 6 mills in the case of property in a town, and 3 mills in the case of
20 property in a city or village, of the total original cost of production plant, general
21 structures, and substations less depreciation, land and approved waste treatment
22 facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm),
23 as reported to the department of revenue of all property within the municipality. The
24 total of amounts, as depreciated, from the accounts of all public utilities for the same
25 production plant is also limited to not more than \$125,000,000. The amount

26 distributable to a county under this subsection and sub. (6) in any year shall not
27 exceed \$100 times the population of the county.

~~NOTE: NOTE: Par. (a) is shown as affected by two acts of the 2003 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:~~

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108; 2003 a. 31, 33, 89; s. 13.93 (2) (c).

28 **SECTION 10. 79.04 (2) (am) 1. of the statutes is amended to read:**

29 79.04 (2) (am) 1. Beginning with the distribution under this subsection in 1991,
30 and ending with the distribution under this subsection in 2004, the amount
31 determined under par. (a) to value property used by a light, heat or power company
32 in a county may not be less than the amount determined to value the property for the
33 distribution to the county under this subsection in 1990, subject to subds. 2. and 3.

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108; 2003 a. 31, 33, 89; s. 13.93 (2) (c).

34 **SECTION 11. 79.04 (4m) of the statutes is created to read:**

35 79.04 (4m) Beginning with distributions in 2005, for production plants
36 described under subs. (1) and (2), if in any year the payments to the municipality and
37 county in which the production plant is located would be greater under subs. (6) and
38 (7) based on the production plant's name-plate capacity than under sub^g. (1) or (2)
39 based on the depreciated net book value of the production plant, the municipality and
40 county shall receive payments under subs. (6) and (7), rather than under sub^g. (1)
41 or (2), beginning in that year and in each year thereafter.

42 **SECTION 12. 79.04 (6) (a) of the statutes, as created by 2003 Wisconsin Act 31,**
43 **is amended to read:**

44 79.04 (6) (a) Annually, beginning in 2005, for production plants that begin
45 operation after December 31, 2003, or begin operation as a repowered production
46 plant after December 31, 2003, except as provided in sub. (4m), the department of
47 administration, upon certification by the department of revenue, shall distribute
48 payments from the public utility account, as determined under par. (b), to each

49 municipality and county in which a production plant is located, if the production
50 plant has a name-plate capacity of at least one megawatt and is used by a light, heat,
51 or power company assessed under s. 76.28 (2) or 76.29 (2), except property described
52 in s. 66.0813, unless the production plant is owned or operated by a local
53 governmental unit located outside of the municipality; by a qualified wholesale
54 electric company, as defined in s. 76.28 (1) (gm); by a wholesale merchant plant, as
55 defined in s. 196.491 (1) (w); by an electric cooperative assessed under ss. 76.07 and
56 76.48, respectively; or by a municipal electric company under s. 66.0825.

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108; 2003 a. 31, 33, 89; s. 13.93 (2) (c).

(END)

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INSERT
9-56

2003 ASSEMBLY BILL 774

January 28, 2004 - Introduced by Representatives JENSEN, GOTTLIEB, NISCHKE, M. LEHMAN, STEINBRINK, OWENS, GRONEMUS, HAHN, ALBERS, JESKEWITZ, SERATTI, HUNDERTMARK, MCCORMICK, PETROWSKI, HINES, VAN ROY, LEMAHIEU, WEBER and VRAKAS, cosponsored by Senators COWLES, KANAVAS and KEDZIE. Referred to Committee on Energy and Utilities.

1 **AN ACT to repeal** 76.28 (9), 79.005 (4) and 79.04 (3m); **to amend** 16.969 (2) (a),
2 70.112 (4) (a), 76.48 (1r), 79.04 (1) (intro.), 79.04 (1) (a), 79.04 (1) (b) 2., 79.04
3 (1) (c) 1., 79.04 (1) (c) 2., 79.04 (1) (c) 3., 79.04 (2) (a), 79.04 (2) (am) 2., 79.04 (2)
4 (b), 79.04 (6) (a) and 196.491 (3) (gm); and **to create** 70.112 (4) (am), 76.28 (3)
5 (e) and 76.48 (3d) of the statutes; **relating to:** public utility aid payments,
6 imposing local general property taxes on production plant general structures
7 and substations, and creating a credit against license fees imposed on light,
8 heat, and power companies and electric cooperatives.

Analysis by the Legislative Reference Bureau

Under current law, beginning in 2005, each county and municipality in which a power production plant is located receives a state aid payment based on the net book value of the production plant, for production plants that, generally, began operation before January 1, 2004, or based on the production plant's megawatt capacity, for production plants that began operation after December 31, 2003. Under this bill, beginning in 2005, each county and municipality in which a power production plant is located will receive a state aid payment based on the production plant's megawatt capacity, except that, if the production plant is a hydroelectric plant or a wind farm, the county and municipality will receive a payment based on

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the net book value of the hydroelectric plant or wind farm. In addition, under current law, for a hydroelectric plant or wind farm that is built after December 31, 2003, the county and municipality in which the plant or wind farm is located will receive an additional payment, beginning in 2005, based on the megawatt capacity of the plant or wind farm.

Under current law, generally, the property of a light, heat, and power company and an electric cooperative association, including general structures and substations, is exempt from the imposition of local general property taxes, if the company or association is subject to license fees. Under this bill, beginning with the property tax assessments as of January 1, 2005, the general structures of such companies and associations are subject to local general property taxes. In addition, beginning with the property tax assessments as of January 1, 2006, the substations of such companies and associations, other than transmission companies, are subject to local general property taxes. However, beginning with license fees that are due in May 2006, light, heat, and power companies and electric cooperative associations may claim as a credit against their license fee liability an amount equal to the amount of the property taxes that the company or association paid in the calendar year on general structures and substations.

Under current law, a person who is issued a certificate of public convenience and necessity for a high-voltage transmission line must pay the Department of Administration an annual impact fee equal to 0.3 percent of the cost of the high-voltage transmission line. Under the bill, the annual impact fee is equal to 0.3 percent of the net book value of the high-voltage transmission line.

Finally, the bill requires the Department of Revenue to submit a proposal to the legislature, no later than December 31, 2004, regarding imposing local general property taxes on all property of electric cooperatives and light, heat, and power companies beginning with the property tax assessments as of January 1, 2007.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.969 (2) (a) of the statutes is amended to read:
2 16.969 (2) (a) An annual impact fee in an amount equal to 0.3% of the cost net
3 book value of the high-voltage transmission line, as determined by the commission
4 under s. 196.491 (3) (gm).

5 ~~**SECTION 2.** 70.112 (4) (a) of the statutes is amended to read:~~

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SECTION 2

1 70.112 (4) (a) All Except as provided in par. (am), all special property assessed
2 under ss. 76.01 to 76.26 and property of any light, heat, and power company taxed
3 under s. 76.28, car line company, and electric cooperative association that is used and
4 useful in the operation of the business of such company or association. If Except as
5 provided in par. (am) 1., if a general structure for which an exemption is sought under
6 this section is used and useful in part in the operation of any public utility assessed
7 under ss. 76.01 to 76.26 or of the business of any light, heat, and power company
8 taxed under s. 76.28, car line company, or electric cooperative association and in part
9 for nonoperating purposes of the public utility or company or association, that
10 general structure shall be assessed for taxation under this chapter at the percentage
11 of its full market value that fairly measures and represents the extent of its use for
12 nonoperating purposes. Nothing provided in this paragraph shall exclude any real
13 estate or any property which is separately accounted for under s. 196.59 from special
14 assessments for local improvements under s. 66.0705.

15 **SECTION 3.** 70.112 (4) (am) of the statutes is created to read:

16 ~~70.112 (4) (am) 1. Beginning with the property tax assessments as of January~~
17 ~~1, 2005, the general structure of a light, heat, and power company taxed under s.~~
18 ~~76.28 or an electric cooperative association is subject to general property taxes.~~

19 ~~2. Beginning with the property tax assessments as of January 1, 2006, a~~
20 ~~substation of a light, heat, and power company taxed under s. 76.28 or an electric~~
21 ~~cooperative association is subject to general property taxes, except that this~~
22 ~~subdivision does not apply to a substation of a transmission company, as defined in~~
23 ~~s. 196.485 (1) (ge).~~

24 **SECTION 4.** 76.28 (3) (e) of the statutes is created to read:

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SECTION 4

1 76.28 (3) (e) Beginning with calendar year 2006, a light, heat, and power
2 company may claim as a credit against the fees imposed under sub. (2) an amount
3 equal to the amount of property taxes imposed under ch. 70 on general structures and
4 substations that the light, heat, and power company paid in the calendar year. A
5 light, heat, and power company that claims the credit under this paragraph shall
6 subtract the amount of the credit from the license fee payment that is due on or before
7 May 10.

8 **SECTION 5.** 76.28 (9) of the statutes is repealed.

9 **SECTION 6.** 76.48 (1r) of the statutes is amended to read:

10 76.48 (1r) Except as provided in s. 76.29, every electric cooperative shall pay,
11 in lieu of other general property and income or franchise taxes, an annual license fee
12 equal to its apportionment factor multiplied by its gross revenues; excluding for the
13 tax period, as defined in s. 76.29 (1) (f), gross revenues that are subject to the license
14 fee under s. 76.29; multiplied by 3.19%. Real Subject to s. 70.112 (4) (a) and (am), real
15 estate and personal property not used primarily for the purpose of generating,
16 transmitting or distributing electric energy are subject to general property taxes. If
17 a general structure is used in part to generate, transmit or distribute electric energy
18 and in part for nonoperating purposes, the license fee imposed by this section is in
19 place of the percentage of all other general property taxes that fairly measures and
20 represents the extent of the use in generating, transmitting or distributing electric
21 energy, and the balance is subject to local assessment and taxation, except that the
22 entire general structure is subject to special assessments for local improvements.

23 **SECTION 7.** 76.48 (3d) of the statutes is created to read:

24 76.48 (3d) Beginning with calendar year 2006, an electric cooperative may
25 claim as a credit against the fees imposed under sub. (1r) an amount equal to the

ASSEMBLY BILL 774

1 amount of property taxes imposed under ch. 70 on general structures and
2 substations that the electric cooperative paid in the calendar year. An electric
3 cooperative that claims the credit under this subsection shall subtract the amount
4 of the credit from the license fee payment that is due on or before May 10.

5 **SECTION 8.** 79.005 (4) of the statutes, as created by 2003 Wisconsin Act 31, is
6 repealed.

7 **SECTION 9.** 79.04 (1) (intro.) of the statutes, as affected by 2003 Wisconsin Act
8 31, is amended to read:

9 79.04 (1) (intro.) Annually, ~~except for production plants that begin operation~~
10 ~~after December 31, 2003, or begin operation as a repowered production plant after~~
11 ~~December 31, 2003,~~ the department of administration, upon certification by the
12 department of revenue, shall distribute to a municipality having within its
13 boundaries a hydroelectric production plant, ~~general structure, or substation or wind~~
14 farm, used by a light, heat, or power company assessed under s. 76.28 (2) or 76.29 (2),
15 except property described in s. 66.0813 unless the hydroelectric production plant or
16 ~~substation~~ wind farm is owned or operated by a local governmental unit located
17 outside of the municipality, or by an electric cooperative assessed under ss. 76.07 and
18 76.48, respectively, or by a municipal electric company under s. 66.0825 the amount
19 determined as follows:

20 **SECTION 10.** 79.04 (1) (a) of the statutes, as affected by 2003 Wisconsin Acts 31
21 and 33, is amended to read:

22 79.04 (1) (a) An amount from the shared revenue account ~~or, for the~~
23 ~~distribution in 2003, from the appropriation under s. 20.835 (1) (t) determined by~~
24 multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or village,
25 the first \$125,000,000 of the amount shown in the account attributable to a

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SECTION 10

1 hydroelectric plant or wind farm, plus leased property, of each public utility except
2 qualified wholesale electric companies, as defined in s. 76.28 (1) (gm), on December
3 31 of the preceding year for "production plant, exclusive of land," ~~"general~~
4 ~~structures," and "substations,"~~ in the case of light, heat and power companies,
5 electric cooperatives or municipal electric companies, for all property within a
6 municipality in accordance with the system of accounts established by the public
7 service commission or rural electrification administration, less depreciation thereon
8 as determined by the department of revenue and less the value of treatment plant
9 and pollution abatement equipment, as defined under s. 70.11 (21) (a), as determined
10 by the department of revenue plus an amount from the shared revenue account ~~or,~~
11 ~~for the distribution in 2003, from the appropriation under s. 20.835 (1) (t) determined~~
12 ~~by multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or~~
13 ~~village, of the first \$125,000,000 of the total original cost of a hydroelectric~~
14 ~~production plant, general structures, and substations or wind farm, less~~
15 ~~depreciation, land and approved waste treatment facilities of each qualified~~
16 ~~wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the~~
17 ~~department of revenue of all property within the municipality. The total of amounts,~~
18 ~~as depreciated, from the accounts of all public utilities for the same hydroelectric~~
19 ~~production plant or wind farm is also limited to not more than \$125,000,000. The~~
20 ~~amount distributable to a municipality under this subsection and sub. (6) in any year~~
21 ~~shall not exceed \$300 times the population of the municipality.~~

22 **SECTION 11.** 79.04 (1) (b) 2. of the statutes, as affected by 2003 Wisconsin Act
23 31, is amended to read:

24 79.04 (1) (b) 2. When a light, heat or power company no longer uses property
25 described under par. (a) as a hydroelectric production plant, substation, or general

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1 ~~structure or wind farm~~ in a municipality, the amount established under subd. 1. shall
2 be reduced by the proportion that the property that is no longer used bears to the total
3 value of all property described in par. (a) in the municipality. The proportion shall
4 be determined according to the proportional value of the property when the light,
5 heat or power company stops using the property.

6 **SECTION 12.** 79.04 (1) (c) 1. of the statutes, as affected by 2003 Wisconsin Act
7 31, is amended to read:

8 79.04 (1) (c) 1. The payment for any municipality in which a hydroelectric
9 production plant or wind farm is located, which the public service commission
10 certifies to the department of revenue will produce a nominal rated capacity of 200
11 megawatts or more, shall be no less than \$75,000 annually, except that the amount
12 distributable to a municipality in any year shall not exceed the per capita limit
13 specified in par. (a).

14 **SECTION 13.** 79.04 (1) (c) 2. of the statutes is amended to read:

15 79.04 (1) (c) 2. If a hydroelectric production plant or wind farm is located in
16 more than one municipality, the total payment under subd. 1. shall be apportioned
17 according to the amounts shown on the preceding December 31 for the hydroelectric
18 production plant or wind farm in the account described in par. (a) for "production
19 plant exclusive of land" within each municipality for all public utilities except
20 qualified wholesale electric companies, as defined in s. 76.28 (1) (gm), or according
21 to the value as reported to the department of revenue under par. (a) of the
22 hydroelectric production plant or wind farm within each municipality for each
23 qualified wholesale electric company. The payment to each municipality under this
24 subdivision shall be no less than \$15,000 annually.

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SECTION 14

1 **SECTION 14.** 79.04 (1) (c) 3. of the statutes, as affected by 2003 Wisconsin Act
2 31, is amended to read:

3 79.04 (1) (c) 3. If a hydroelectric production plant or wind farm with a nominal
4 rated capacity of 200 megawatts or more is decommissioned or becomes nonutility
5 property, the \$75,000 minimum guaranteed payment under subd. 1. shall continue
6 but diminish by \$7,500 annually, except that the minimum guaranteed payment
7 under this subdivision shall cease in the year following the first year in which the
8 property becomes taxable by the taxation district. In this subdivision, "nonutility
9 property" has the meaning set forth in the uniform system of accounts established
10 by the public service commission. This subdivision does not apply after the
11 distributions in 2004.

12 **SECTION 15.** 79.04 (2) (a) of the statutes, as affected by 2003 Wisconsin Acts 31
13 and 33, is amended to read:

14 79.04 (2) (a) Annually, ~~except for production plants that begin operation after~~
15 ~~December 31, 2003, or begin operation as a repowered production plant after~~
16 ~~December 31, 2003, the department of administration, upon certification by the~~
17 ~~department of revenue, shall distribute from the shared revenue account or, for the~~
18 ~~distribution in 2003, from the appropriation under s. 20.835 (1) (t) to any county~~
19 ~~having within its boundaries a hydroelectric production plant, general structure, or~~
20 ~~substation or wind farm, used by a light, heat or power company assessed under s.~~
21 ~~76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless the hydroelectric~~
22 ~~production plant or substation wind farm is owned or operated by a local~~
23 ~~governmental unit that is located outside of the municipality in which the~~
24 ~~hydroelectric production plant or substation wind farm is located, or by an electric~~
25 ~~cooperative assessed under ss. 76.07 and 76.48, respectively, or by a municipal~~

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1 electric company under s. 66.0825 an amount determined by multiplying by 6 mills
2 in the case of property in a town, and by 3 mills in the case of property in a city or
3 village, the first \$125,000,000 of the amount shown in the account attributable to a
4 hydroelectric production plant or wind farm, plus leased property, of each public
5 utility except qualified wholesale electric companies, as defined in s. 76.28 (1) (gm),
6 on December 31 of the preceding year for "production plant, exclusive of land,"
7 ~~"general structures," and "substations,"~~ in the case of light, heat and power
8 companies, electric cooperatives or municipal electric companies, for all property
9 within the municipality in accordance with the system of accounts established by the
10 public service commission or rural electrification administration, less depreciation
11 thereon as determined by the department of revenue and less the value of treatment
12 plant and pollution abatement equipment, as defined under s. 70.11 (21) (a), as
13 determined by the department of revenue plus an amount from the shared revenue
14 account ~~or, for the distribution in 2003, from the appropriation under s. 20.835 (1)~~
15 ~~(t) determined by multiplying by 6 mills in the case of property in a town, and 3 mills~~
16 ~~in the case of property in a city or village, of the total original cost of a hydroelectric~~
17 ~~production plant, general structures, and substations or wind farm~~, less
18 depreciation, land and approved waste treatment facilities of each qualified
19 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
20 department of revenue of all property within the municipality. The total of amounts,
21 as depreciated, from the accounts of all public utilities for the same hydroelectric
22 production plant or wind farm is also limited to not more than \$125,000,000. The
23 amount distributable to a county under this subsection and sub. (6) in any year shall
24 not exceed \$100 times the population of the county.

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SECTION 16

1 **SECTION 16.** 79.04 (2) (am) 2. of the statutes, as affected by 2003 Wisconsin Act
2 31, is amended to read:

3 79.04 (2) (am) 2. When a light, heat or power company no longer uses property
4 described under par. (a) as a hydroelectric production plant, substation, or general
5 structure or wind farm in a county, the amount established under subd. 1. shall be
6 reduced by the proportion that the property that is no longer used bears to the total
7 value of all property described in par. (a) in the county. The proportion shall be
8 determined according to the proportional value of the property when the light, heat
9 or power company stops using the property.

10 **SECTION 17.** 79.04 (2) (b) of the statutes is amended to read:

11 79.04 (2) (b) The payment under par. (a) for any county in which a hydroelectric
12 production plant or wind farm is located, which the public service commission
13 certifies to the department of revenue will produce a nominal rated capacity of 200
14 megawatts or more, shall be not less than \$75,000 annually, except that the amount
15 distributable to a county in any year shall not exceed the per capita limit specified
16 in par. (a).

17 **SECTION 18.** 79.04 (3m) of the statutes, as created by 2003 Wisconsin Act 31,
18 is repealed.

19 **SECTION 19.** 79.04 (6) (a) of the statutes, as created by 2003 Wisconsin Act 31,
20 is amended to read:

21 79.04 (6) (a) ~~Annually, beginning in 2005, for production plants that begin~~
22 ~~operation after December 31, 2003, or begin operation as a repowered production~~
23 ~~plant after December 31, 2003~~ are not hydroelectric production plants or wind farms,
24 the department of administration, upon certification by the department of revenue,
25 shall distribute payments from the public utility account, as determined under par.

ASSEMBLY BILL 774

1 ~~(b), to each municipality and county in which a production plant is located, if the~~
2 ~~production plant has a name-plate capacity of at least one megawatt and is used by~~
3 ~~a light, heat, or power company assessed under s. 76.28 (2) or 76.29 (2), except~~
4 ~~property described in s. 66.0813, unless the production plant is owned or operated~~
5 ~~by a local governmental unit located outside of the municipality; by a qualified~~
6 ~~wholesale electric company, as defined in s. 76.28 (1) (gm); by a wholesale merchant~~
7 ~~plant, as defined in s. 196.491 (1) (w); by an electric cooperative assessed under ss.~~
8 ~~76.07 and 76.48, respectively; or by a municipal electric company under s. 66.0825.~~

9 SECTION 20. 196.491 (3) (gm) of the statutes, as affected by 2003 Wisconsin Act
10 89, is amended to read:

11 196.491 (3) (gm) The commission may not approve an application filed after
12 October 29, 1999, under this subsection for a certificate of public convenience and
13 necessity for a high-voltage transmission line that is designed for operation at a
14 nominal voltage of 345 kilovolts or more unless the approval includes the condition
15 that the applicant shall pay the fees specified in sub. (3g) (a). If the commission has
16 approved an application under this subsection for a certificate of public convenience
17 and necessity for a high-voltage transmission line that is designed for operation at
18 a nominal voltage of 345 kilovolts or more that was filed after April 1, 1999, and
19 before October 29, 1999, the commission shall require the applicant to pay the fees
20 specified in sub. (3g) (a). For any application subject to this paragraph, the
21 commission shall determine the ~~cost~~ net book value of the high-voltage transmission
22 line, identify the counties, towns, villages and cities through which the high-voltage
23 transmission line is routed and allocate the amount of investment associated with
24 the high-voltage transmission line to each such county, town, village and city.

25 SECTION 21. Nonstatutory provisions.

ASSEMBLY BILL 774

(1) PROPOSAL TO IMPOSE GENERAL LOCAL PROPERTY TAXES ON UTILITY PROPERTY. No later than December 31, 2004, the department of revenue shall submit a proposal to the legislature under section 13.172 (2) of the statutes regarding imposing local general property taxes under chapter 70 of the statutes on the property of electric cooperatives and light, heat, and power companies beginning with the property tax assessments as of January 1, 2007. The proposal shall include distribution and transmission property and property included in the production plant account that does not directly generate electricity.

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SECTION 22. Initial applicability.

(1) The treatment of sections 76.28 (9) and 76.48 (1r) of the statutes first applies to the property tax assessments as of January 1, 2005.

(2) The treatment of sections 79.005 (4) and 79.04 (1) (intro.), (a), (b) 2., and (c) 1., 2., and 3., (2) (a), (am) 2., and (b), and (6) (a) of the statutes first applies to distributions made on the 4th Monday of July, 2005.

(END)